

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

CNH CAPITAL AMERICA LLC,

Plaintiff,

vs.

TIM McCANDLESS, d/b/a  
McCANDLESS FARMS,

Defendant.

No. C05-2087

**FINAL JURY INSTRUCTIONS**

**FINAL INSTRUCTION NO. 1**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

**FINAL INSTRUCTION NO. 2**

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

**FINAL INSTRUCTION NO. 3**

The fact that CNH is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

**FINAL INSTRUCTION NO. 4**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

**FINAL INSTRUCTION NO. 5**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claims rely upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

In some instances, you will be instructed that a fact must be proven by "clear, convincing, and satisfactory" evidence. Evidence is clear, convincing, and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

The greater weight or preponderance of the evidence, or whether a fact has been proven by clear and convincing evidence, is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

**FINAL INSTRUCTION NO. 6**

Regarding its claim for breach of contract, CNH must prove all of the following propositions:

1. The existence of a contract.
2. The consideration.
3. The terms of the contract.
4. McCandless has breached the contract.
5. The amount of any damage McCandless has caused.

If CNH has failed to prove any of these propositions, then CNH is not entitled to damages on this claim and you will consider its remaining claims. If CNH has proved all of these propositions, then CNH is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 7**

**Regarding element No. 1 of Instruction No. 6,** the existence of a contract requires a meeting of the minds on the material terms. This means the parties must agree upon the same things in the same sense. You are to determine if a contract existed from the words and acts of the parties, together with all reasonable inferences you may draw from the surrounding circumstances.

**Regarding element No. 2 of Instruction No. 6,** "consideration" is either a benefit given or to be given to the person who makes the promise or a detriment experienced or to be experienced by the person to whom the promise is made. Where the contract provides for mutual promises, each promise is a consideration for the other promise.

**Regarding element No. 3 of Instruction No. 6,** in determining the terms of the contract you may consider the following:

- a. The intent of the parties along with a reasonable application of the surrounding circumstances.
- b. The intent expressed in the language used prevails over any secret intention of either party.
- c. The intent may be shown by the practical construction of a contract by the parties and by the surrounding circumstances.
- d. You must attempt to give meaning to all language of a contract. Because an agreement is to be interpreted as a whole, assume that all of the language is necessary. An interpretation which gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless.
- e. The meaning of a contract is the interpretation a reasonable person would give it if they were acquainted with the circumstances both before and at the time the contract was made.

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**FINAL INSTRUCTION NO. 7 (Cont'd)**

f. Ambiguous language in a written contract is interpreted against the party who selected it.

g. Where general and specific terms in the contract refer to the same subject, the specific terms control.

**Regarding element No. 4 of Instruction No. 6, a breach of the contract occurs when a party fails to perform a term of the contract.**



FINAL INSTRUCTION NO. 8

Even if McCandless did not sign the Retail Installment Contracts, he can be found liable for breach of contract if you determine that he ratified the contracts. A person whose signature is placed on a contract by fraud or deceit may nonetheless ratify the contract if (1) he failed to rescind the contract within a reasonable amount of time after discovering the fraud or deceit; (2) he took any benefit of the contract after learning of the fraud or deceit; or (3) he manifested an intention to affirm the contract or acted in a manner inconsistent with an individual who intended to disaffirm the contract.

If you determine that McCandless ratified the Retail Installment Contracts, then CNH is entitled to recover on its breach of contract claims.

FINAL INSTRUCTION NO. 9

Regarding its claim that McCandless conspired with Walterman Implement, Leon Walterman, and others, to defraud CNH, the plaintiff must prove all of the following propositions:

1. Leon Walterman and/or Walterman Implement committed the wrong of fraudulent misrepresentation.

~~2.~~ McCandless participated in a conspiracy with Leon Walterman and/or Walterman Implement to defraud CNH.

3. The nature and extent of damage.

If CNH has failed to prove any of these propositions, then CNH is not entitled to damages on this claim and you will consider its remaining claims. If CNH has proved all of these propositions, then CNH is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 10**

**Regarding element No. 1 of Instruction No. 9, "fraudulent misrepresentation"**  
occurs when:

- a. A person makes a representation to another.
- b. The representation is false.
- c. The representation is material.
- d. The person knew the representation was false.
- e. The person intended to deceive the other person.
- f. The other person acted in reliance on the truth of the representation and was justified in relying on the representation.

**Regarding element No. 2 of Instruction No. 9, a conspiracy is an agreement** of two or more persons to commit a wrong against another. The agreement can be oral or written, informal or formal, and need not be detailed. The agreement need not be expressed in words and may be implied and understood to exist from the conduct itself. It may be proved by direct or circumstantial evidence. Merely because two or more persons associate with each other, or meet to discuss common interests or goals does not, by itself, establish a conspiracy.

A person participates in a conspiracy when the person joins the agreement with the intention to accomplish the wrongful act. A participant need not know all the details of the agreement nor all of the other participants. One who innocently furthers wrongful conduct by another does not participate in a conspiracy.

**FINAL INSTRUCTION NO. 11**

Regarding its claim that McCandless aided and abetted Walterman Implement, Leon Walterman, and others to defraud CNH, the plaintiff must prove the following propositions:

1. Leon Walterman and/or Walterman Implement committed the wrong of fraudulent misrepresentation.

2. McCandless knew of the fraudulent misrepresentation by Leon Walterman and/or Walterman Implement.

3. McCandless knowingly gave substantial assistance or encouragement to Leon Walterman and/or Walterman Implement in the commission of the fraudulent misrepresentation.

4. The nature and extent of damage.

If CNH has failed to prove any of these propositions, then CNH is not entitled to damages on this claim and you will consider its remaining claims. If CNH has proved all of these propositions, then CNH is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 12**

**Regarding element No. 1 of Instruction No. 11, “fraudulent misrepresentation”**  
occurs when:

- a. A person makes a representation to another.
- b. The representation is false.
- c. The representation is material.
- d. The person knew the representation was false.
- e. The person intended to deceive the other person.
- f. The other person acted in reliance on the truth of the representation and was justified in relying on the representation.

**Regarding element No. 2 of Instruction No. 11, to know or have knowledge of something** requires a general awareness by McCandless of Waltermann’s wrongful acts.

**Regarding element No. 3 of Instruction No. 11, “substantial assistance”** requires (1) a substantial causal connection between the wrongful conduct of McCandless and the harm to CNH; or (2) the wrongful conduct is a substantial factor in causing the fraudulent misrepresentation. Substantial assistance can take the form of positive deeds of manipulation or deception or it can take the form of inaction.

FINAL INSTRUCTION NO. 13

Regarding its claim for fraudulent misrepresentation, CNH must prove the following propositions by a preponderance of clear, satisfactory, and convincing evidence:

~~1.~~ During a period of time between July 2002 and September 2005, McCandless made representations to CNH that he would maintain the equipment described in the subject contracts at the location specified, that he would keep the equipment free of all liens, encumbrances, and security interests, and that he would not sell, lease, or otherwise dispose of the equipment.

~~2.~~ The representation was false.

~~3.~~ The representation was material.

~~4.~~ McCandless knew the representation was false.

~~5.~~ McCandless intended to deceive CNH.

~~6.~~ CNH acted in reliance on the truth of the representation and was justified in relying on the representation.

~~7.~~ The representation was a proximate cause of CNH's damage.

8. The amount of damage.

If CNH has failed to prove any of these propositions, then CNH cannot recover damages on this claim. If CNH has proved all of these propositions, then CNH is entitled to recover damages in some amount.

**FINAL INSTRUCTION NO. 14**

**Regarding element No. 1 of Instruction No. 13,** "a representation" is any word or conduct asserting the existence of a fact. It may include silence if the defendant fails to disclose information which the defendant has a duty to disclose and which the plaintiff has reason to believe will be disclosed.

**Regarding element No. 3 of Instruction No. 13,** a representation is "material" if:

- a. A reasonable person would consider it as important in making a decision.
- b. The defendant knows or has reason to know that the plaintiff considers, or is likely to consider, the representation as important in making a decision.
- c. The representation influences a person to enter into a transaction which would not have occurred otherwise.

**Regarding element No. 4 of Instruction No. 13,** the defendant knew the representation was false if any of the following situations existed:

- a. The defendant actually knew or believed the representation was false.
- b. The defendant made the representation without belief in its truth or in reckless disregard of whether it was true or false.
- c. The defendant falsely stated or implied that the representation was based on his personal knowledge or investigation.
- d. The defendant made a representation which he knew or believed was materially misleading because it left out unfavorable information.
- e. The defendant stated his intention to do or not to do something when he did not actually have that intention.
- f. The defendant knew the representation could be understood in both a true and false manner, and made the representation (i) intending that it be understood in the false

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**FINAL INSTRUCTION NO. 14 (Cont'd)**

sense, (ii) having no belief as to how it would be understood, or (iii) in reckless disregard of how it would be understood.

**Regarding element No. 5 of Instruction No. 13**, the defendant intended to deceive the plaintiff if any of the following situations existed when he made a representation:

- a. The defendant wanted to deceive the plaintiff or believed that the plaintiff would in all likelihood be deceived.
- b. The defendant had information from which a reasonable person would conclude that the plaintiff would be deceived.
- c. The defendant made the representation without concern for the truth.

**Regarding element No. 6 of Instruction No. 13**, the plaintiff must rely on the representation and the reliance must be justified. It is not necessary that the representation be the only reason for the plaintiff's action. It is enough if the representation was a substantial factor in bringing about the action. Whether reliance is justified depends on what the plaintiff can reasonably be expected to do in light of their own information and intelligence.

**Regarding element No. 7 of Instruction No. 13**, the conduct of a party is a proximate cause of damages when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. "Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause. A particular result may have more than one proximate cause.



**FINAL INSTRUCTION NO. 15**

If you find CNH is entitled to recover on its claims of breach of contract or fraudulent misrepresentation, then the measure of damages is an amount that would place CNH in as good a position as it would have enjoyed if the contracts had been performed or McCandless's representations had been true. The damages you award for breach of contract or fraudulent misrepresentation must be foreseeable or have been reasonably foreseen at the time the parties entered into the contracts or the representations were made. In your consideration of the damages, you may consider the amounts owed under the Retail Installment Contracts, and other damages incurred by CNH as a result of McCandless's misrepresentations.

If you find CNH is entitled to damages on its claims of conspiracy or aiding and abetting, then the measure of damages is the loss incurred by CNH which was proximately caused by McCandless's wrongdoing. The conduct of a party is a proximate cause of damages when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. "Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause. A particular result may have more than one proximate cause.

In arriving at the amount of damages, you cannot establish a figure by taking down the estimate of each juror as to damages and agreeing in advance that the average of those estimates shall be your award for damages. Rather, you must use your sound judgment based upon impartial consideration of the evidence.

**FINAL INSTRUCTION NO. 16**

In addition to compensatory damages, CNH also claims entitlement to “punitive damages.” Punitive damages may be awarded if CNH has proven by a preponderance of clear, convincing, and satisfactory evidence that McCandless’ conduct constituted willful and wanton disregard for the rights of another and caused actual damage to CNH.

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Punitive damages are not intended to compensate for loss but are allowed to punish and discourage McCandless and others from like conduct in the future. You may award punitive damages only if McCandless’ conduct warrants a penalty in addition to the amount you award to compensate for CNH’s actual losses.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of McCandless’ conduct that harmed CNH.
2. The amount of punitive damages which will punish and discourage like conduct by McCandless. You may consider McCandless’ financial condition or ability to pay. You may not, however, award punitive damages solely because of McCandless’ wealth or ability to pay.
3. CNH’s actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to CNH.
4. The existence and frequency of prior similar conduct.

FINAL INSTRUCTION NO. 17

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.


*Fourth*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

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**FINAL INSTRUCTION NO. 17 (Cont'd)**

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

DATED this 28<sup>th</sup> day of June, 2007.

  
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JON STUART SCOLES  
United States Magistrate Judge  
NORTHERN DISTRICT OF IOWA